

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

DESHAWN CARTER,

Defendant-Appellant.

UNPUBLISHED

September 21, 2010

No. 291535

Wayne Circuit Court

LC No. 08-016290-FC

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84,¹ assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of four to ten years for the assault with intent to do great bodily harm conviction, and 14 to 40 years for the assault with intent to rob conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from his participation in an assault and attempted robbery of Kerry Oates at Oates's home in Detroit. The prosecution's theory at trial was that defendant's cousin, Shelton Carter, lured Oates out of his house, after which defendant emerged from an alley armed with an assault rifle, confronted Oates on the front porch of his house, and demanded Oates's money. Oates refused to cooperate and was shot in the leg. The defense theory at trial was that defendant went to Oates's house alone to collect a drug debt, that an argument ensued during which Oates produced a weapon, and that Oates was accidentally shot when he and defendant fought over the weapon.

Defendant's sole claim on appeal is that he is entitled to resentencing because the trial court erroneously scored ten points for offense variable (OV) 4 of the sentencing guidelines. We disagree.

¹ Defendant was charged with assault with intent to commit murder, MCL 750.83.

“A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.” *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). A scoring decision “for which there is any evidence in support will be upheld.” *Id.* “A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.” *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008).

Ten points may be scored for OV 4 where “[s]erious psychological injury requiring professional treatment occurred to a victim.” MCL 777.34. “The fact that professional treatment was not sought is not conclusive when scoring the variable.” *People v Wacławski*, 286 Mich App 634, 681; 780 NW2d 321 (2009). In this case, defendant shot the victim in the leg with an AK-47 assault rifle. The victim testified at trial that he believed that defendant was going to kill him. The injury was so severe that the victim’s leg had to be amputated above the knee. At codefendant Shelton Carter’s sentencing,² the prosecutor recounted how the victim had cried when he testified at trial about the loss of his leg. In addition, the trial court had information from the victim’s impact statement in codefendant’s case that the loss of the victim’s leg had rendered him unable to earn a living by continuing his lawn cutting business. Considering the nature of the offense, the permanent nature of the victim’s injury, the effect of the injury on the victim’s life, and the evidence of the victim’s demeanor at trial, the trial court did not err in finding that there was adequate support for a finding that the victim sustained a serious psychological injury that may require professional treatment. Thus, the trial court did not abuse its discretion in scoring ten points for OV 4.

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

² Defendant and codefendant were sentenced at the same hearing and were represented by the same attorney at sentencing. Codefendant was sentenced first and defendant was sentenced immediately afterward.